

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 606 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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SOMABHAI BHANABHAI KOLI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR KG SHETH , Advocate for the appellant(appointed).
MR. B.D. Desai, A.P.P. for the State.

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE M.C.PATEL

Date of decision: 12/01/98

ORAL JUDGEMENT (Per Soni,J.)

Appellant original accused(hereinafter referred to as "accused") in Sessions Case no.61/1988 has challenged the order of conviction and sentence under Sections 302 and 324 of the Indian Penal Code whereby he is ordered to undergo rigorous imprisonment for life and

there being no separate sentence under Section 324 of IPC by the learned Additional Sessions Judge Valsad at Navsari by his judgment dated 2nd September, 1989 has preferred this appeal.

The accused, deceased and two others were residing in their respective rooms in Patel Falia, village Masa, Taluka Gandevi. Their property was partitioned, however, there were disputes amongst themselves. In the evening of 12th June, 1988 at about 8 O'Clock deceased and his wife were constructing some weather shed in the rear portion of their room. Their son was sleeping near the gate on the Southern side of the room. After completion of that weather shed, deceased went to take his son to his room. It is the case of the prosecution that at the relevant time accused was sitting outside his room which is on the South of the room of the deceased. When deceased went to take his son accused took out a knife and he pushed the deceased who fell on a cot which was lying there. The accused then gave two knife blows on the chest portion and ran away. When the wife of the accused intervened, she was also injured on the hand. Police Patel reached the scene of offence on receipt of information from one Anilbhai. He searched for accused. As the accused was not found he proceeded towards Police Station at Gandevi, however, on the way near bus-stand accused was found and he took the accused with him to the Police Station. The First Information Report was recorded at about 30 hrs. on 13th January, 1988. The investigation was started and the accused came to be chargesheeted. The accused pleaded not guilty to the charge. Prosecution led necessary evidence to prove the charge. On completion of the evidence for the prosecution further statement of the accused was recorded. The accused in his further statement has come out with a case that deceased and his wife were quarrelling when someone came and gave blow to the deceased and he found the wife of the deceased with a knife in her hand and the deceased lying on the ground. He then went to call Police Patel who was not at his house. When he came back he found Police Patel at the scene of offence. Though he informed Police Patel about the incident he was not heard by the Police Patel saying that the wife of the deceased involves him as assailant. The accused has not led any defence evidence. The learned Sessions Judge after hearing the parties, recorded conviction and passed the order referred hereinabove.

Learned Advocate Mr. K.G. Sheth has challenged the order of conviction and sentence on the ground,

namely, (i) that the case against the accused is a concocted one in as much as there is unreasonable, unexplained delay in filing the F.I.R, (ii) that the evidence of the witnesses is not reliable in as much as either they are interested or related to the accused. In the alternative, it is contended that the incident took place in the course of a sudden quarrel, and therefore, it would be covered under exceptions to Section 300 of the Indian Penal Code. The case of the accused should therefore fall within the purview of Section 304 Part II of the Indian Penal Code.

Learned Addl. P.P. Mr. Desai contended that the oral evidence on record is cogent, convincing and though of some of the relatives of the deceased, yet it is acceptable and the learned Sessions Judge has rightly accepted the same. Mr. Desai tried to explain delay by saying that the complainant and others are rustic villagers and they do not look into the clock every moment and according to him the clock was looked into for the first time when the police registered the offence. He also contended that from village Masa the place of offence, police station is at a distance of about 12 to 15 kilometers away having no pucca approach road. Therefore there is no delay according to him. Even if there is delay the same should not affect adversely the case of the prosecution particularly when the name of the accused is disclosed immediately and the accused was also found and produced before the police instantaneously.

So far as the third contention is concerned as to whether the offence falls within exception to Section 300 or not, Mr. Desai contended that the case of the accused shall squarely fall within clause (3) of Section 300 and evidence on record about sudden quarrel is no evidence as there is only a suggestion about the quarrel but without proof thereof. Mr. Desai, therefore contended that the appeal should be dismissed and the conviction be confirmed.

It will be relevant to refer to the evidence of Savitaben PW.8 wife of deceased. She has deposed that : " Incident took place at about 8 O' Clock at night on 12th June, 1988. On that day before 8 O'Clock night my husband and I were building weather shed to the rear room.....on that day it was holiday of Sunday and therefore he had not gone to his job. We completed our work of constructing shed by about 7.00 to 7.30 evening. Then I went to my old house to prepare food. Our property is shared by constructing rooms by wooden partition. The accused was residing in the old house.

When I went to my old house to prepare food accused was sitting on a stool in a property of his share. His wife was preparing food in the house. When the wife of the accused called him for dinner, he told his wife to take their food and sleep. He also uttered that if anyone comes to me for verbal exchange, then, I will kill him. After preparing supper she went to her room. I told my husband that " Your brother is speaking like this, however, you need not speak." My husband told me that we are not going to quarrel with anyone, and I asked him(her husband) to bring our son Hitesh who was sleeping near the front door. He(husband) therefore went to take their son at the front door. I also went behind him. When my husband was passing from there to take the son, accused stood up and pushed my husband who then fell on a cot. That cot was lying in the lobby outside the room. At the time when my husband fell on the cot, Soma gave two knife blows on his chest. I intervened. I was injured on my two fingers of right hand by the knife. My husband shouted," Save, save" and tried to run away however, when he reached near the electric pole he fell down. Somabhai ran away in the direction in which my husband ran. I shouted for help. My injuries were bleeding. Police took me to hospital for treatment."

Defence is not able to take out anything from this witness in her cross-examination. Keeping in mind this evidence, if we look at the map Exh.13 things may become clear. Rooms of the accused and his brothers are situated adjoining to each other in North to South direction. The first room is of the deceased, the second room on the South is of Lallubhai, the third room is of Somabhai-accused and the fourth is of Natubhai. On the South of Natubhai's room there is a Paijari and to the South thereof there is another room of the deceased. This other room is known as the old room where they had their kitchen. According to this witness the son was sleeping near the gate on the South of the room of Natubhai. So when deceased Moti Bhana went from his room to the North to take his son from the South side he had to cross the room of the accused and the accused, at that time, according to this witness, pushed the deceased and he fell on a cot lying in the Osri. He gave two knife blows on chest. The evidence of PW.8 is supported by the evidence of Bhagubhai Ramabhai Patel, PW.4 who is informed by Anilkumar Bhikubhai Patel, PW.10. Anilkumar, PW.10 in his evidence has stated that " When I was sitting at about quarter to eight in my house one Amrat Nanu and Raman Chhagan came to inform me that Somabhai has stabbed Motibhai with a knife. He then told me, " Let's inform the police" and they went to inform the

police. Police Patel met them on the road and they accompanied to the scene of offence where they found Motibhai having injuries on the chest lying near the electric pole. This witness Anilkumar was informed by Amrat Nanu and Raman Chhagan. Amrat Nanu PW.11 is examined at Exh.26. According to Amrat Nanu, PW.11 he was at his home in the evening at about 8 O'Clock on 12th June, 1988. As there was a hue and cry he went there and found Moti Bhana lying besides the electric pole and he was alive. He had received blow on his chest and was bleeding. Savitaben told him to bring taxi. He therefore went to the house of Anil for Taxi. As Anil denied, he went to Police Patel who met him on the road. Then they came near the place where Moti Bhana was lying. Raman Chhagan is not examined. According to Savitaben, PW.8 her mother in law was also sitting there who had also seen the incident. Therefore, it will be relevant to refer to the evidence of Amliben-mother of deceased: ".....On my children having grown up the property was partitioned. Four rooms were constructed in our block. Each son was given one room. I was residing with the deceased. Son of the deceased was sleeping in front of the door and I was sitting besides him. From the above referred evidence of the witnesses, evidence of Savitaben PW.8 is corroborated to the fact that their son was sleeping in front of the door. According to the evidence of Amliben PW.6 deceased ran towards the North of their house after being injured and was lying near the electric pole and the name of the accused was immediately disclosed by Savitben PW.8 to Amratbhai, Anilbhai and Police Patel Bhagubhai who has lodged the complaint. Incident took place in the evening of 12th June, 1989 near the room of accused. Simply because there is a quarrel about the property by itself is not a ground to wrongly rope in the accused by the wife of the deceased. Simply because the mother has turned hostile to the main incident as to who caused injury to the deceased, the evidence of the wife of the deceased cannot be rejected. In our Indian society, we may appreciate the plight of the mother who has already lost one son and by telling the truth is likely to lose the other son also. However, from the evidence of the mother, it is clear that on the date of incident, son of deceased was sleeping in front of the door. In our opinion, this lends corroboration to the evidence of Savitaben PW.8 to the extent that she asked her husband the deceased to go and fetch their son sleeping in front of the door. There is no suggestion even on the part of the defence that the accused was not available in the house at the relevant time. In the cross-examination of Savita the case put by the defence is as under.....It is not true that deceased and I

had gone to assault Somabhai for our domestic quarrel. It is not true that Somabhai was taking his dinner at that time. It is not true that we made an attempt to assault Somabhai. It is not true that scuffle took place at that time. It is not true that deceased and accused were drunk at that time. It is not true that the knife was of deceased Motibhai. It is not true that I was injured with the knife of deceased.....It is not true that accused was not present at the scene of incident.....I tried to catch hold of the knife, but I could not and I was injured. From the suggestion in the cross-examination, it is clear that the incident took place at the house of the accused. One Bhanuben-neighbour is examined. However, she is delclared hostile but certain relevant portion of her evidence can be looked into which is permissible under law and that part of the evidence is:

" There was verbal exchange in the house of Soma. As it exceeded I came out and I saw Moti put his hand on his chest coming out of the house and he fell near the light pole and I saw Somabhai running away." According to the allegation in defence, it is clear that deceased was injured. Witness Savitaben PW.8 was also injured. The question is if someone else has injured the deceased there was no reason for Savita to involve her real brother in law for the injury on the person of her husband. The locality where the incident took place appears to be compact locality where only brothers reside. There is no possibly of any third person to be present in that locality at the relevant time nor there is any suggestion that any third party may have any reason to assault the deceased. Thus, when the learned Sessions Judge has accepted the evidence of causing injuries on the person of the deceased by the accused, we do not find any reason to interfere with the same.

Learned Advocate Mr. Sheth has contended that it is clear from the evidence of the witness that the scuffle took place and there was sudden quarrel between the deceased and the accused and the case would fall within exception 4 to Section 300. Exception 4 to Section 300 reads as under:

"Exception 4:-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner."

On partition of properties between the brothers,

there appears some dissatisfaction amongst them and as they are residing near about there are quarrels inter se. On the day of incident accused was telling his wife that if any one comes for verbal exchange then he will kill him. This part of the evidence is not challenged in the cross examination of PW.8. This apart when the deceased went to take his son sleeping in front of the room, according to PW.8, the accused stood up and pushed the deceased. When deceased fell on a cot, the accused gave two blows on his chest. Suggestion as to sudden quarrel in the cross-examination of PW.8 is not quarrel between the accused and the deceased but it was a quarrel between the deceased and his wife. Even in further statement the accused has said that the husband and wife were quarrelling and coming to the front door from the rear door. Except suggestions in the cross-examination of certain witnesses there is no substantive material to act or rely and hold that there was sudden quarrel between the accused and the deceased. Assuming that there was a sudden quarrel between the accused and the deceased then also to attract Exception 4 to Section 300, it is necessary for the accused to show from the record that the act was without premeditation in a sudden fight in heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. There is nothing on record to show that the deceased had any weapon with him. The deceased was unarmed. The deceased was going to fetch his son. At that time the accused pushed the deceased and when the deceased fell on the cot the accused gave two blows on his chest. When deceased was unarmed, giving of two blows which we have referred hereinabove clearly suggests that the accused took undue advantage of the deceased being unarmed and has acted in a cruel or unusual manner. There was no earthly reason for the accused to inflict any injury on the person of the deceased.

One of the contentions raised by learned Advocate Mr. Sheth is that there are two external injuries on the person of the deceased. Dr. Dhirajlal V. Patel, PW.1, has stated in his evidence that injury no.1 is possible by Muddammal knife. For second injury longer blade is required. Relying on this evidence Mr. Sheth contended that the prosecution relies on the Muddammal knife as the weapon used for the purpose of commission of offence, then the second injury caused on the person of the deceased is by some other weapon and some other person particularly when no other weapon is ascribed to the accused. In cross-examination the Doctor has admitted that injury no.2 is not possible by Muddammal knife as

its blade is only 3 1/2". To appreciate this argument, it will be relevant to refer to the evidence whereby Muddammal article is seized by the prosecution. From the evidence of Bhagubhai, PW.4 it is clear that on receipt of information they searched for the accused who was then found standing near the bus-stand. He was then taken to his house and in company of Kishore accused was taken to the Police Station. When accused was produced before the police he was arrested on drawing Panchnama Exh.15. I searched on the person of the accused. A knife was found out the blade of which is 3 1/2" and the handle is 4 1/2". No question is put in cross examination or examination-in-chief of Savitaben, PW.8 suggesting that this was the knife used by the accused for causing injuries on the person of the deceased. What is in evidence is that when the accused was arrested a knife is found from his pocket. There is no evidence on record to show that this is the knife used for the purpose of causing injuries to the deceased. There is no reason to reject the evidence of Savitaben, PW.8 for an additional circumstance of injury on her person at the relevant time by the weapon used by the accused to injure the deceased. Savitaben immediately disclosed the fact to the Medical Officer that she was injured while she tried to snatch away the weapon from the accused. She is an injured witness and there is no suggestion that her injuries were caused sometime prior to the incident or subsequent to the incident or in some other incident may be at the relevant time. Thus, the say of Savitaben, in our opinion is corroborated by her injuries also.

From the postmortem notes, following are found to be the external injuries and internal injuries:-

External injuries:

1. Incised wound-stab wound 1-1/1" x 1/2" x 5-1/2" on left side of anterior chest wall parallel to 3rd intercostal space 2" left to the midline.
2. Incised wound-stab would 1-1/2" x 1/2" x 8" on rt.side of anterior chest wall lying obliquely in the 5th intercostal space 2-1/2" rt. to the midline. 5th rib is partially cut.

Internal injuries:

1. 1st external injury piercing backwards and medially cutting left border of sternum, pleura, upper lobe of left lung and bronchus and thoracic arorta. Dark coloured reddish black blood present

in thoracic cavity.

2. 2nd external injury is piercing backwards and downwards to the middle and lower lobe of rt.lung down to the rt.dome of the diaphram-massive haemorrhage and rt.thoracic cavity is filled with dark coloured reddish black blood about 300 to 400 c.c mixed with air bubbles.

External injury no.2 is incise stab wound 1 1/2" x 1/2" x 8" on right side of anterior chest wall intercostal space 2 1/2" right to the midline 5th rib partially cut. A stab wound of 8" depth would not be caused ordinarily unless necessary force is used. Use of force is suggestive of cruel act. Every injury caused on a person may not be a cruel act but giving a blow which causes a stab injury of 8" depth does not suggest anything but cruelty. Thus, in our opinion, case of accused does not fall within Exception 4 to Section 300.

The deceased has died a homicidal death and that fact is not disputed by either of the parties. Looking to the injuries both external and internal and when the Doctor has specifically stated that the injuries were sufficient to cause death and the cause of death is shock resulting from massive haemorrhage from injuries to vital organs like lungs, diaphram and asphyxia due to bilateral pneumothorax, the death is a homicidal death.

In the result, the appeal fails and is dismissed.

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